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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. <u>96-45</u>
)	
Forward-Looking Mechanism)	
for High Cost Support for)	
Non-Rural LECs)	CC Docket No. 97-160

TO: THE COMMISSION

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") hereby submits comments in response to the Commission's Further Notice of Proposed Rulemaking¹ regarding the development of a model intended to estimate the cost of providing universal service by non-rural carriers serving high cost areas. Although PRTC continues to provide comments in response to the Commission's notice, PRTC renews its objection to the grouping of non-rural carriers serving insular areas with all other non-rural carriers for purposes of determining universal service support. PRTC has filed a Petition for Reconsideration with the Commission addressing this issue.

1. CC Docket 96-45, FCC 97-256 (rel. July 18, 1997).

I. CUSTOMER LOCATION IS A KEY PLATFORM DESIGN COMPONENT

The platform design chosen for customer location in the model will likely have a significant effect on the model's capability to produce accurate cost assessments. However, it is impossible at this time for PRTC to assess either the Hatfield or the BCPM with respect to customer location or any other platform design feature. As PRTC has informed the Commission previously, the models have not been populated with Puerto Rico data. This fact precludes PRTC from providing detailed responses to the Commission for assessing the models' operation for Puerto Rico, during the comment period specifically intended for interested parties to do so. This places PRTC and Puerto Rico at a disadvantage.

It is certain, however, that population density cannot be equated with subscriber density. The 74 percent penetration rate in Puerto Rico indicates that there are many passed homes, even in areas of dense population. Nonsensical results have arisen previously when similar population densities were assumed to translate into similar costs of service between two very different areas. In the Local Competition Proceeding, for example, the proposed loop proxy for Puerto Rico was set equal to that for New Jersey, based on the assumption that the two areas of similar population had the same density. However, the average loop cost in Puerto Rico exceeds that of New Jersey by 76 percent. This example demonstrates why assumptions should not be applied in the model without being tested. Therefore, in the

Universal Service Proceeding — where the goal is to ensure affordable basic service for all consumers — the Commission should not reach similar conclusions without running the model using Puerto Rico data.

II. PRTC HAS NOT BEEN GIVEN A MEANINGFUL OPPORTUNITY TO COMMENT IN THIS PROCEEDING

The population of any model with Puerto Rico specific data is months away. Even so, the Commission intends to select the platform design features of a model by December 31, 1997.² As of the date of this filing, the Commission will have received detailed comments from other parties regarding switching, interoffice trunking, signaling, and local tandem investment, and now, customer location. PRTC's brief comments in this proceeding addressing model platform design have been seriously restricted by PRTC's inability to assess any model outputs for Puerto Rico and how these may be affected by any Commission proposals set forth in the FNPRM. To the extent that the Commission intends to select platform design features for a model that will be applied to PRTC, PRTC will have been afforded no meaningful opportunity to comment on the platform design features.

Section 553(b) of the Administrative Procedure Act requires an agency to "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." 47 U.S.C. § 553(b); see also Florida Power & Light Co. v. United

2. Universal Service Order at ¶ 245.

states, 846 F.2d 765, 771 (D.C. Cir. 1988), cert.denied, 490 U.S. 1045 (1989). The process thus far has not "assure[d] that the agency will have before it the facts and information relevant to a particular administrative problem." MCI Telecom. Corp. v. FCC, 57 F.3d 1136, 1141 (D.C. Cir. 1995). At this time, the FCC would not be able to adopt platform design features having been tested in a model populated with Puerto Rico, data. Adoption of these platform design features for Puerto Rico may result in procedural error due to the lack of opportunity for meaningful comment on the technical basis for the action. See Connecticut Light & Power Co. v. NRC, 673 F.2d 525, 530-31 (D.C. Cir., cert. denied, 459 U.S. 835 (1982)).

Although it is the Commission's understandable intention to permit interested parties to provide information to improve the models and inform the Commission regarding the pending selection of the model, PRTC has not been provided a meaningful opportunity to participate, given the fact that it has no basis for developing informed opinions on many if not all of the issues raised regarding platform design. The process to date has been fundamentally unfair considering that the Commission apparently still expects to hold PRTC to a proxy model universal service methodology. This model would presumably include platform design features integral to its operation that have been untested for Puerto Rico, either as they currently function or once any revisions are incorporated. Thus, no party will have had an

opportunity to comment meaningfully in this regard for Puerto Rico.

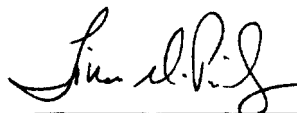
Such an outcome can be avoided, however, if the Commission acknowledges that it is premature to require carriers serving Puerto Rico to convert to a proxy model methodology as of January 1, 1999. Instead, the statute and procedural requirements require that an alternative timetable be set for Puerto Rico. This will permit sufficient time to develop and test Puerto Rico data in the model and permit the Commission to ensure the effectiveness of the new universal service methodology for this insular area, as required by section 254(b)(3) of the Communications Act.

III. CONCLUSION

PRTC again urges the Commission to establish a process for review and evaluation of the models as they pertain to insular areas like Puerto Rico. This process should allow adequate time

for population of the models with Puerto Rico data, as well as review and testing of their results. Until a model is validated for application to Puerto Rico, PRTC will not have any meaningful opportunity to participate in assessing and providing input for the selection of one of the existing models, or the development of a hybrid model. This would constitute a denial of PRTC's procedural rights under the Administrative Procedure Act.

Respectfully submitted,



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Dated: September 2, 1997

CERTIFICATE OF SERVICE

I, Michael A. Roberts, certify that true and correct copies of the foregoing Comments of Puerto Rico Telephone Company were delivered by hand-delivery and U.S. Mail, first-class postage pre-paid, on September 2, 1997, to the following:

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